



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Gerard Seeley, Jr.  
Regional Director

### STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO OLD CHURCH ENTERPRISES, INC. D/B/A WEST STORE

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and Old Church Enterprises, Inc. d/b/a West Store for the purpose of resolving certain violations of environmental law and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "VA Code" means the Code of Virginia (1950), as amended.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
6. "Order" means this document, also known as a Consent Special Order.

7. "Facility" means West Store, the combination fast mart and gasoline station containing three (3) underground storage tanks currently in use, FAC ID No. 4021859, located at 4225 Mechanicsville Turnpike, Mechanicsville, Virginia.
8. "Old Church" means Old Church Enterprises, Inc., owners and operators of West Store, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
9. "Notification form" means Form 7530 used by DEQ to register and track USTs for proper operation, closure and ownership purposes. 9 VAC 25-580-70.
10. "Regulation" means 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing USTs systems, registration of tanks, closure of noncompliant tanks, and release detection requirements.
11. "UST" means underground storage tank as defined in 9 VAC 25-580-10 and Virginia Code § 62.1-44.34:8.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Old Church Enterprises, Inc. ("Old Church") d/b/a West Store. Chuck Fleet ("Fleet") and Donald Pabst ("Pabst") are officers and shareholders in Old Church. Through Old Church, Fleet and Pabst operate a convenience store and retail gasoline station known as West Store (the "Facility"). West Store is located at 4225 Mechanicsville Trnpg., Virginia.
2. At the Facility there are three USTs used to store petroleum for retail sale. The USTs are identified as follows:

Tank No.	Capacity	Content
1	10,000	gasoline
2	8,000	gasoline
3	6,000	gasoline

3. Because petroleum is a "regulated substance" as defined by Va. Code 62.1-44.34:8 and 9 VAC 25-580-10, the USTs at the Facility are regulated under 9 VAC 25-580-10, *et seq.*
4. On May 18, 2004 the Department conducted a formal inspection of the Facility and observed that Old Church had not submitted a Notification Form showing that Old Church owns the USTs. The Department subsequently learned that Old Church has owned the USTs since 1992. The Department also learned that leak detection for the USTs and piping had not been conducted. There was no

evidence of compliance with the Stage II Vapor Recovery requirements or with the financial assurance requirements.

5. By letter dated July 20, 2005, the Department notified Old Church that it planned to inspect the Facility again.
6. On August 11, 2005, the Department conducted a formal inspection and again observed that Old Church had not submitted the Notification Form; did not have records demonstrating it was conducting leak detection for the USTs and the associated piping at the Facility; and did not demonstrate that it had financial assurance.
7. On September 20, 2005, the Department issued a Warning Letter (WL) to Old Church citing the above violations.
8. By e-mail on September 22, 2005, Fleet notified the Department that the requirements of the WL had been completed.
9. The Department requested that documentation of compliance including the UST financial responsibility requirements be provided by November 8, 2005.
10. Old Church did not submit any of the information requested by the Department.
11. On December 6, 2005, the Department issued a Notice of Violation to Old Church for the above violations.
12. On February 14, 2006, the Department and Old Church met to discuss the alleged violations.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Old Church, and Old Church voluntarily agree, to perform the actions described in Appendix A of this Order; and to pay a civil charge of **\$5,600** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this order and shall note the Federal Identification Number for Old Church. Payment shall be by check, certified check, money order, or cashiers check payable to "Treasurer of Virginia" and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

## **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Old Church, for good cause shown by Old Church, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the NOV issued on December 6, 2005. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the property as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Old Church admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Old Church consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Old Church declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Old Church to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Old Church shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Old Church shall show that such circumstances were beyond its control and not due to a lack of

good faith or diligence on its part. Old Church shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

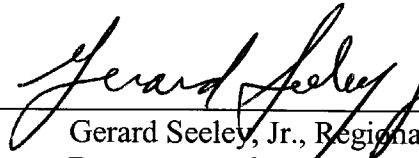
Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Old Church. Notwithstanding the foregoing, Old Church agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. Old Church petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Old Church.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Old Church from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By the signatures below, Old Church voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of September 7, 2006.



Gerard Seeley, Jr., Regional Director  
Department of Environmental Quality

Old Church voluntarily agrees to the issuance of this Order.

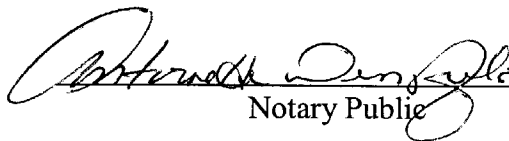
By: Charles M. Fleet Pres  
Date: 6/23/06

Commonwealth of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 23<sup>rd</sup> day of

June, 2006, by Charles M. Fleet, on behalf of Old Church.  
(name)



Notary Public

My commission expires: 11-30-2008

## APPENDIX A

Old Church shall:

1. Repair or replace the out-of-service automatic tank gauging (ATG) system; or replace the ATG system with an approved release detection method required by the UST regulations by **August 1, 2006**.
2. Submit to DEQ, Piedmont Regional Office, copies of the ATG monthly tank release detection testing and monitoring records in accordance with 9 VAC 25-580-140 for the next **6** consecutive months, beginning with **August 2006** and ending with the **February 2007** records.
3. Submit to DEQ, Piedmont Regional Office, a current, valid annual line tightness and leak detector test results on the piping in accordance with 9 VAC 25-580-140 by **August 1, 2006**.